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IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75-7861

COUNTY BOARD OF ARLINGTON COUNTY,

Petitioner,

v.

MARY ROSE GREENE GOD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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COUNTY BOARD OF ARINGTON COUNTY,

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MARY ROSE GREENE GOD,

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PETITION FOR A WRIT OF CERTIORARI

The petitioner prays that a writ of certiorari issue to review the decision of the Supreme Court of Virginia rendered on September 5, 1975, affirming a finding of the Circuit Court of Arlington County, Virginia, that the existing single-family zoning of two building lots in Arlington County, Virginia, was invalid and that the denial of a rezoning of the lots for an apartment house use was arbitrary and capricious.

OPINION BELOW

The opinion of the Supreme Court of Virginia is reported at 216 Va. ____, 217 S.E.2d 801 (1975). The opinion is appended to the petition in the appendix. That appendix page is 1a.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1257(3), Title 28, United States Code. It is well-settled that the injunction against the application of the Zoning Ordinance to respondent's land, and the decision that the ordinance was unconstitutional as applied, is drawing into question the validity of a "state statute" for the purposes of 28 U.S.C. § 1257(3). See, e.g., *City of Pittsburgh v. Alco Parking Corp.*, 417 U.S. 369, 94 S. Ct. 2291, 41 L. Ed.2d 132 (1974).

THE QUESTIONS PRESENTED FOR REVIEW

1. Does the decision of the Virginia Supreme Court discriminate in favor of the owner of the two building lots in Arlington County and against other persons in the neighborhood of the building lots and other persons residing in Arlington County and in that way violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

2. Does the decision of the Virginia Supreme Court which rules that existing single-family zoning of two

building lots in Arlington County was invalid misconstrue the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and in so doing invalidate a legitimate exercise of the police power of the State of Virginia which is being asserted by the County Board of Arlington County, Virginia?

STATUTES INVOLVED

1. Section 8 of the Arlington County, Virginia, Zoning Ordinance: "R-6" One Family Dwelling Districts. Although the provisions of this ordinance were not declared to be a violation of the Equal Protection Clause of the Fourteenth Amendment, the applicability of this section, which is set forth in the appendix at page 17a, to the land in question was at issue. This section incorporates by reference the following section.

2. Section 4 of the Arlington County, Virginia, Zoning Ordinance: "R-20" One Family Dwelling Districts. This section is set forth more fully in the appendix at pages 13a.

3. Section 14 of the Arlington County, Virginia, Zoning Ordinance: "RA6-15" Apartment Building Districts. This section is set forth in the appendix at pages 22a and incorporates Section 11 which refers back to the following primary section.

4. Section 11 of the Arlington County, Virginia, Zoning Ordinance: "RA14-26" Apartment Dwelling District, App. 19a.

5. The following sections of the Code of Virginia which are set forth in the appendix at pages 11a-13a.

Section 15.1-486; Section 15.1-488; Section 15.1-489; Section 15.1-490.

6. The Fourteenth Amendment to the United States Constitution, Section 1, which is set forth in the appendix at page 10a.

7. Article I, Section 11 of the Constitution of Virginia which is set forth in the appendix at page 10a.

STATEMENT OF THE CASE

The respondent and applicant for rezoning in this case, Mary Rose Greene God (hereafter, Miss Greene or the applicant), owns Lots 26 and 27 in the West Colonial Heights Subdivision of Arlington County. They are in the neighborhood referred to as North Highlands at the southern end of the Potomac Palisades and bounded by Lee Highway, Spout Run, George Washington Memorial Parkway and a local Arlington street named North Oak Street. Lot 26 contains 6,672 square feet and Lot 27 to the north of it contains 7,191 square feet. They have access to North Quinn Street on the west and are on an irregularly shaped block.[1] The lots are zoned R-6 (a

[1] An exhibit has been prepared which clearly represents Exhibit C-13 offered by Miss Greene in her case at the trial level. It is provided for the purpose of making this statement of fact more understandable. See Appendix page 25a. Since Miss Greene's exhibit does not show the zoning line in the neighborhood of the property, a second exhibit has been prepared by the County to show the zoning classification. It is the exhibit at appendix page 26a.

single-family residential zone - a minimum of 6,000 square feet required for each dwelling) and have been so zoned since 1950 when all of the property on the block north of the line which forms the southern border of Lot 26 was zoned R-6. At that time the comparatively small portion of the block south of the line was zoned RA6-15 (multi-family residential with a requirement of 600 square feet of lot for units of one room exclusive of kitchen and bath up to 1,500 square feet for each apartment with four or more rooms exclusive of kitchen and bath). Then from 1950 to 1954, the County Board rezoned much of the remainder of the block RA6-15. There was no evidence of any rezonings after 1954 and no evidence of any other rezonings in the North Highlands neighborhood after 1950. To the south of Miss Greene's property are two lots (numbered 24 and 25) which have been zoned RA6-15 since 1950 but which are each used for a single-family dwelling. Lot 28 is to the north of Miss Greene's property and Lot 29 is to the east of her property and those lots are both zoned and used as R-6 single-family property. Only the dwelling on Lot 29 separates the Greene property from property zoned and used under the RA6-15 zoning classification. The houses on Lots 24, 25, 28 and 29 are wood frame houses estimated to be about 50 years old at the time of the trial in 1974. The apartments on the block to the east of Lot 29 are brick garden apartments, two to three stories high and built in the early to middle fifties. Across Quinn Street from the applicant's property are the rear yards of four brick residences which face west on Rolfe Street. The trial judge estimated, based on his personal observation, that these four houses were 20

to 25 years old at the time of the trial. The southern two of those are on lots zoned RA8-18 (an apartment zoning category with slightly lower density than RA6-15). The other two are zoned R-6. South of the two lots zoned RA8-18 is property zoned and used as RA8-18 property. Quinn Street mounts a steep grade south of Miss Greene's property and has reached level ground in front of it.

The property in the surrounding neighborhood was designated "undetermined" on the Land Use Plan until February 21, 1973, when the land in the area of the applicant's property was designated residential low density or residential low medium density by unanimous action of the County Board. The dividing line between these categories follows the zoning line in the neighborhood of the Greene land, with her land in the residential low density (single-family) category.

Miss Greene bought the land in 1965 for approximately $23,000. Lot 26 had a dwelling house which she rented and later boarded up. Lot 27 has always been vacant. In January of 1968, she applied for a rezoning to RA8-18, then withdrew the application after a recommendation of denial by the County Manager and the County Planning Director. In 1971, the County Board adopted a Neighborhood Conservation Plan for the North Highlands neighborhood which had been recommended by the neighborhood citizens association which emphasized Land Use Plan recommendations. Those recommendations were for land use designations consistent with the existing zoning. It is this recommendation which included an exhibit, frequently complained of by Miss Greene, which had a mistake about existing apartment use of

some land on Rolfe Street zoned RA8-18. This mistake was not repeated at the time of the 1972 action on Miss Greene's application for rezoning nor at the time of the 1973 action on the land use designation.

Then in 1972, Miss Greene requested a rezoning to RA6-15. The County Planning staff recommended denial of the application as the Planning Commission also did by unanimous vote. At the hearing before the County Board on October 3, 1972, the County Board saw slides of the neighborhood, heard from a member of the Planning staff who summarized the contents of Exhibit D-7, heard from the Chairman of the Planning Commission, in opposition to the application, heard from the applicant's husband in support of the application, heard the representative of the Arlington County Civic Federation who spoke in opposition to the application, heard from a representative of the neighborhood civic association who spoke in opposition to the application, and then voted unanimously to deny the application. She then instituted this action.

At the trial, Miss Greene's husband testified that she would be restricted to building houses which would sell for $40,000 to $45,000 on each of the lots. He also testified to his interest in "houses that surround the North Highlands area, or surround other parts of Arlington County and land that we possibly could develop", and to his interest in buying Lots 28 and 29, the single-family lots next door to his wife's lots. Her expert witness testified to 18 reasons in support of his conclusion that the lots should be rezoned. These included his conclusions that it would not be economical to build two single-family

dwellings, that single-family dwellings would not achieve a satisfactory "lifestyle", and that townhouses would meet the different "lifestyles." He also testified that Lots 28 and 29 should be zoned the same way as Lots 26 and 27, and that all four lots (perhaps six including 24 and 25) should be used for a transitional zone between the apartment buildings and single-family residences. On Miss Greene's lots he proposed 10 or fewer units. The County Board disputes the contentions of Miss Greene's husband and of her expert witness.

Miss Greene disputes the County's evidence but that evidence was the evidence of the Citizen Services Planner, who explained the neighborhood conservation plan which had been relied upon in recommendations made to the County Board on the application. The Director of Utilities repeated the opinion that had been given to the County Board at the time of the application: "We are reaching the point now that on the existing layout in that area that with much more development we would put ourselves in a position of not being able to provide adequate service to domestic users and at this time our fire protection is rather weak." The Chief of the Planning and Zoning Section of the County government testified to his expert opinion that the single-family designation should be maintained to preserve the balance of uses and existing characteristics of the neighborhood and to his opinion of the desirability of the land for single-family development or other uses under the R-6 zoning classification.

In its written opinion, the Virginia Supreme Court said:

> "The two lots in question, together with two other lots in different ownership, are the remnants of a larger single-family district established in 1950 in a block now almost entirely zoned for and devoted to apartment uses, in an area of Arlington County dominated by garden-type apartment houses. The landowner showed that the construction of single-family residences on the lots in question would be economically unfeasible; that the existing zoning was unreasonable; and that her proposed use, the construction of 10 'townhouses of garden apartment style' under an appropriate classification, would be reasonable. Against this, only the opposition of a local civic association and the claim of a serious water problem, which proved to be nonexistent, suggested that the present zoning should be retained."

The County Board believes certain of these findings have no basis in the record in this case. First of all, in the first sentence quoted from the opinion, it is suggested that the single-family residential district was limited to the block on which the lots were located when the zoning was established in 1950. The record is clear and no dispute has ever been raised about the fact that this is a neighborhood including more than the block in question and divided between a garden apartment district closer to Lee Highway and a single-family district closer to the wooded area along the Potomac Palisades. (See Miss Greene's map, infra) On this first and narrow issue, it is only an implication of the Virginia Supreme Court that is disputed, but on the next issue, the County Board believes that the clear language used by the Virginia Supreme Court is in conflict with the record. This is the Virginia Supreme Court's finding that the area in

question is an area of Arlington County dominated by garden-type apartment houses. The trial court made no such finding, and such a finding was not even alleged by Miss Greene. The entire record as well as Miss Greene's exhibit on appendix page 25a show that there is no support for this finding of fact by the Virginia Supreme Court. Miss Greene's allegation, furthermore, was not that the construction of single-family residences on the lots would be economically unfeasible, but that she would be limited to building $40,000 to $45,000 houses on the lots. The Virginia Supreme Court's mistake in characterizing the County's evidence in opposition is even more serious. At no point in the record does the County place any reliance on opposition of a local civic association. The County Board's position was that the neighborhood conservation plan adopted the year before the zoning application and approved by the Planning Commission and the County Board was inconsistent with any such rezoning. Although the Virginia Supreme Court found that the claim of a serious water problem proved to be nonexistent, nowhere in the record is there any rebuttal of the opinion of the Chief of the Utilities Division of Arlington County that this neighborhood and one other neighborhood in Arlington County had the worst or the lowest quality of water service of any neighborhoods in Arlington County. Finally, the County's most important contention (a consideration given great weight by Miss Greene's own expert) was totally ignored by the Virginia Supreme Court as well as by the trial court. This was the opinion of the County's Planning expert that the preservation of these lots as single-family lots was highly important to

the maintenance of this area of Arlington County as an area in which single-family dwellings could be preserved and constructed. Furthermore, the civic or democratic opposition claimed that a rezoning of Miss Greene's lots would have amounted to an illegal "spot zoning" and the County Board has contended as a part of its case in both the trial court and the Supreme Court of Virginia that a granting of this application would have been an illegal spot zoning, and, accordingly, a denial of equal protection to the citizens of Arlington County other than the one landowner who would have been benefited by it.

REASONS FOR GRANTING A WRIT OF CERTIORARI

A. THE VIRGINIA SUPREME COURT HAS RENDERED A DECISION WHICH CONSTITUTES A DENIAL OF EQUAL PROTECTION TO THE RESIDENTS OF AN ARLINGTON NEIGHBORHOOD.

The County's first contention is that the Virginia Supreme Court rendered a decision in conflict with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The County argues that there are two independent grounds for concluding that the decision of the Virginia Supreme Court is in conflict with the United States Constitution. The first of those independent grounds is that fact that the result reached by the Virginia Supreme Court has the effect of granting to Miss Greene an illegal spot zoning which gives her greater

rights to use her land than other persons similarly situated without there being any rational basis for that discrimination in favor of Miss Greene. The second of those independent grounds for finding the decision of the Virginia Supreme Court in conflict with the United States Constitution has to do with the relief provided to Miss Greene. In effect, the Virginia Supreme Court will allow Miss Greene to use her land as part of a specially created judicial zone. This specially created judicial zone is improper because the Virginia Supreme Court did not have a valid basis for overruling the action of the Arlington County Board in placing and leaving Miss Greene's property in a single-family zone. The County concedes that this second independent basis for finding the Virginia Supreme Court's decision a violation of the Equal Protection clause is interrelated with the second question presented for review. What the County is saying is that when a state court misconstrues the Equal Protection clause of the United States Constitution by overruling a valid legislative act regulating the use of land and then creates a judicial right to use land which confers a special privilege on a single person or a limited class of persons, then in that case the state court is itself engaging in an invalid legislative act which denies to the citizens of the community affected the equal protection of the laws guaranteed to them by the Fourteenth Amendment.[2]

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[2]The County Board has standing to assert that the decision and order of the Virginia Supreme Court is illegal spot zoning. This is not merely a case of a local government acting as the representative of its residents [see footnote 23, *Baker v. Carr*,

This fashioning of a judicial remedy which denies to persons the equal protection of the laws is what was invalidated by the case of *Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836 (1948). Under the circumstances which exist here, an argument that the decision of the Virginia court results in a denial of equal protection is much less novel than such a decision was in the case of *Shelley v. Kraemer, supra.* In *Shelley v. Kraemer*, the Missouri court had merely enforced a covenant to which private parties had obligated themselves but here the Virginia Supreme Court has reached a result which would have been forbidden to a legislature by engaging in an act of illegal spot zoning. Viewed from another perspective, the Virginia Supreme Court has erroneously overruled a valid legislative act and in fashioning a remedy based on that erroneous overruling, it has created circumstances which are themselves, or which by themselves create, a denial of equal protection of the laws to every member of the community except the person who sought to benefit from a special privilege conferred by the Virginia judiciary.

Clearly, the first independent grounds on which this analysis rests requires a finding that the action of the

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369 U.S. 186, 204, 82 S. Ct. 691, 703 (1962)]. Here the Board is being: (1) enjoined from enforcing its own ordinances, and thus unable to perform its governmental functions, and (2) being ordered to take affirmative acts which are in violation of the Fourteenth Amendment. Were the County Board to comply with such an order, the Board members would be violating their oath to uphold the Constitution, and would be subjecting themselves and the County to suit by the neighborhood residents.

Virginia Supreme Court constitutes an illegal spot zoning and that an illegal spot zoning is a violation of the Equal Protection clause of the Fourteenth Amendment. Miss Greene's two lots are near the border between a single-family residential district and a multi-family residential district. In fact, one of the lot lines of one of the two lots is the border between the two districts although in fact that lot line is not a border between different actual uses. The land zoned for multi-family uses on which Miss Greene's lot borders is still actively used for single-family residences. Accordingly, Miss Greene's land is similarly situated to numerous other parcels of land zoned for single-family uses and located in the neighborhood in question. Since it is so similarly situated, there must be a rational basis for distinguishing between Miss Greene's land and all other land zoned for single-family dwelling uses which is similarly situated. The only fact actually cited by the Virginia Supreme Court as providing a rational basis for its de facto rezoning of Miss Greene's land is the Virginia Supreme Court's conclusion that the construction of single-family residences on the lots in question would be economically unfeasible. Miss Greene's evidence was that she would be restricted to building $40,000 to $45,000 houses on the lots, not that to do so was economically unfeasible. Furthermore, she bought the lots in 1965 when they were zoned and used for single-family purposes and even at the time of the trial her husband expressed a strong interest in buying the adjacent single-family lots. No finding of economic infeasibility was made by the trial judge in his

memorandum opinion and the finding by the Virginia Supreme Court is without any factual basis in the record. The objective result of the Virginia Court's opinion is to serve a private economic interest and nothing else, and this is a purpose which has been found improper as a basis for rezoning. It is commonly referred to as illegal spot zoning. The highest courts of numerous states have passed on the question of illegal spot zoning. See, e.g., *Herman v. City of Des Moines*, 250 Iowa 1281, 97 N.W.2d 893 (1959); *Hunt v. City of San Antonio*, 462 S.W.2d 536 (Texas 1971) (This was one of the cases on spot zoning cited to the court below.); *Page v. City of Portland*, 178 Ore. 632, 165 P.2d 280 (1946); and *Kozesnik v. Township of Montgomery*, 24 N.J. 154, 131 A.2d 1 (1957). No evidence of the other party, no finding of the trial court, and no finding of the Virginia Supreme Court is based on any allegation or conclusion that the rezoning of Miss Greene's land will serve any public interest or any other interest than her private interest. The characteristic test for determining whether a zoning ordinance constitutes illegal spot zoning is as follows:

> "If the purpose of a zoning ordinance is solely to serve the private interests of one or more landowners, the ordinance represents an arbitrary and capricious exercise of legislative power, constituting illegal spot zoning; but if the legislative purpose is to further the welfare of the entire county or city as a part of an overall zoning plan the ordinance does not constitute illegal spot zoning even though private interests are simultaneously benefited." *Kozesnik v. Township of Montgomery*, 24 N.J. 154, 173, 131 A.2d 1, 11 (1957).

This was quoted with approval in *Wilhelm v. Morgan*, 208 Va. 398, 403, 157 S.E.2d 920,924 (1967). It is difficult to dispute that the Virginia Supreme Court has violated this rule by changing land use regulations with respect to a particular piece of property and not providing or having any basis for that change which is part of an overall zoning plan or which serves any aspect of the health, safety, welfare or good order of the community. Clearly, it serves Miss Greene's private interests to have more discretion in the use of her land than do other persons in Arlington County who are similarly situated.

The second independent basis for the conclusion that the judicial privilege accorded to Miss Greene is a denial of the equal protection of the laws to other persons may be amplified as follows. This ground, however, is interrelated with the reasoning which lies behind the County's argument on the second question presented for review. This position is that even if the rezoning or judicial change in land use regulations is not equivalent to an illegal spot zoning and in that way a denial of the equal protection of the laws, then it is still a denial of the equal protection of the laws with respect to other citizens in Arlington County if it follows upon a misconstruction of the Fourteenth Amendment by the Virginia Supreme Court and a resulting favoritism to one landowner as a result of that misinterpretation. This favoritism has notably lasting effects where the action is one of applying land use regulations. In the case of most legislation, a misconstruction of the Equal Protection Clause of the Fourteenth Amendment as it is applied to a single person in one particular case would not have such a long range effect. If, for example, a state supreme

court improperly applied the Fourteenth Amendment to invalidate a tax on a particular person and in so doing denied the equal protection of the laws to other persons, the issue could be raised again at the time of the next levy. However, in the peculiar case of the legislative act of subjecting a particular piece of land to zoning regulations, a permanency attaches to the subjection of that land to those regulations which is unique, and which means that the use of the land in violation of the Equal Protection Clause is a continuing violation of the rights of others. The other persons in the community affected by the Virginia Supreme Court's change in the land use regulations are without a guide to the standards being applied by that court in any instance that it chooses to judicially rezone land to serve private interests.

B. THE VIRGINIA SUPREME COURT HAS MISCONSTRUED THE EQUAL PROTECTION CLAUSE.

The second question presented for review is the question raised by the contention of the County that the Virginia Supreme Court has misconstrued the Equal Protection Clause of the Fourteenth Amendment and erroneously found the action of the Arlington County Board unreasonable. The County believes that the Virginia Supreme Court has, in effect, applied the strict scrutiny test to the rezoning action by the Arlington County Board and, without stating so, required that County Board to show a compelling governmental interest for its action. The only clue to the basis for the Virginia Supreme Court's decision in this case is the following language:

> "Under the circumstances of this case, the denial of the rezoning application was discriminatory, and, therefore, arbitrary and capricious."

The Virginia Supreme Court has made clear that where it refers to a legislative zoning action as discriminatory, it means to declare that such action constitutes a denial of equal protection of the laws. In *Board of Supervisors of James City County v. Rowe*, 216 Va. ____, 216 S.E.2d 199, 210 (1975), the Virginia Supreme Court said:

> "When a land use permitted to one landowner is restricted to another similarly situated, the restriction is discriminatory, and, if not substantially related to the public health, safety or welfare, constitutes a denial of equal protection of the laws."

The Virginia Constitution has no equal protection clause but merely defines certain classes of prohibited governmental discrimination. See Virginia Constitution, Article I, Section 11, in the appendix at page 10a. It is indisputable then that the only basis for the Virginia Supreme Court's decision is a basis which must be found in the Equal Protection clause of the Fourteenth Amendment. Whether the question is one of equal protection or of special legislation, the test for determining validity under the Equal Protection clause appears to be the same. In certain cases where a suspect classification (e.g., race, creed, etc.) or a fundamental right (e.g., freedom of religion, freedom to travel, etc.) is involved, laws and ordinances have been subjected to strict scrutiny by this Court and by other courts in the United States applying the principles formulated by this Court, and a requirement of a showing of a compelling state interest is

necessary to sustain the validity of any such classification. *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 89 S. Ct. 1404 (1969); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 89 S. Ct. 1079 (1966); *Douglas v. California*, 372 U.S. 353, 83 S. Ct. 814 (1963). The reason for subjecting statutes and ordinances to strict scrutiny in such cases is that traditional political processes have broken down. See footnote 14, *Johnson v. Robison*, 415 U.S. 361, 375-76, 94 S. Ct. 1160, 1169-70 (1974). However, in cases where traditional political processes have not broken down, where no suspect classification or fundamental right is involved, a classification will be sustained if it is not unreasonable or arbitrary and if it rests upon some ground of difference having a fair and substantial relationship to the object of the legislation, *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536 (1974); *Johnson v. Robison, supra; Reed v. Reed*, 404 U.S. 71, 92 S. Ct. 251 (1971); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114 (1926). Customarily, it is understood that it is not for the courts to reappraise the judgment of the legislature:

> "When the legislature has spoken, the public interest has been declared in terms well-nigh conclusive." *Berman v. Parker*, 348 U.S. 26, 32, 75 S. Ct. 98, 102 (1954).

Since property owners and land developers are not a suspect classification, the burden was on Miss Greene to prove by clear and convincing evidence that the denial of the rezoning had no reasonable relationship to the maintenance of such premissible community interests as "a quiet place where yards are

wide, people few, . . .[and] a sanctuary for people." *Village of Belle Terre v. Boraas, supra*, at 9, 94 S. Ct. at 1514. Cf. *Berman v. Parker, supra; Ybarra v. City of Town of Los Altos Hills*, 503 F.2d 250 (9th Cir., 1974). The court here has failed to consider the expert testimony of the planner for the County summarizing the reasons for maintaining the existing low-density residential use regulations for Miss Greene's land:

> "The existing zoning boundary which is reflected in the property being surrounded on three sides by single-family use and zoning; the land use not denying the zoning, but the land use as single-family on the remaining side of the property; the general character of the neighborhood; the balance of uses which the staff felt at the time should be preserved; the location of the property [on] the local street versus a collector [or] main thoroughfare; and in 1972, the general support of a neighborhood plan which indicated the preservation of the balance of uses and the existing zoning use."

This same expert also testified:

> "I think that the preservation of those single families in that quadrant are very important to the continuing stability and retention of single-family use on the remaining quadrants of that intersection."

These considerations should be unavoidable conclusions for any person applying prevailing standards of equal protection to legislative acts. Experience teaches most persons that whenever there is a line which has been drawn under circumstances which cannot avoid a degree of arbitrariness, then when that line is upset, the community will be far less likely to rely on an

expectation that the newly-established line will be continued. A quick look at the exhibit on appendix page 25a will show that the land between Quinn and Rolfe south of 21st Road as well as the land east of Queen Street between 21st Road and 22nd Street may be subject to rezoning by the Virginia courts at any time if the County may not rely on its intention to maintain a family residential district as a basis for imposing single-family use restrictions. This case demonstrates now that, in the application of the Equal Protection clause, Virginia, unlike any other jurisdiction in the United States which has considered the issue, gives no weight to the desire of a locality to protect the integrity and character of neighborhoods. The protection of single-family neighborhoods against the encroachment of multi-family apartment buildings has been an approved purpose of zoning ordinances since the earliest cases approving land use regulations. *Village of Euclid v. Ambler Realty Co., supra*, 272 U.S. at 394, 47 S. Ct. at 120. This has been the rule throughout the United States. *Herman v. City of Des Moines, supra; Page v. City of Portland, supra,* and *Hunt v. City of San Antonio, supra*. Unless the Fourteenth Amendment is to be applied differently in Virginia than in any other American state, a review by this Court of the standard which is being applied by the Virginia Supreme Court is necessary.

CONCLUSION

The Virginia Supreme Court in this case is applying the Equal Protection clause of the Fourteenth

Amendment to the United States Constitution in a manner which has been condemned by this Court. Its highest court has distinguished Virginia from other states in setting the standard for the burden of proof of rebuttal evidence in zoning cases, the weight and relevancy to be accorded claims respecting the effect of market value on rezoning actions, the burden of proof to be employed to determine changed conditions, and, most importantly, the rights of neighboring property owners and the interest of the community in maintaining single-family residential districts. All this has been done by the court which is purportedly applying the Equal Protection clause of the Fourteenth Amendment. The County Board believes that it is fair to characterize the result reached by the Virginia Supreme Court as comparable to the results reached by those American courts which have in the past applied a view of "natural law" not expressed in the written constitution being interpreted in order to invalidate the acts of legislatures. While a review of cases like this could have the short-range effect of increasing the number of cases brought before this Court, for the long-range it is important for this Court to speak clearly on misuses of the Equal Protection Clause by State courts in order to take early action to prevent a future circumstance under which this Court and the entire American Judiciary could become deeply embroiled in re-appraisals of legislative judgments.

More importantly, the Virginia Supreme Court, ostensibly relying on the Equal Protection clause, is in fact engaging in an action which offends that clause, and should be condemned by this Court. In its zeal to perform a legislative function, the Virginia Supreme

Court has itself violated the Equal Protection clause by performing a de facto illegal spot zoning. Unless this error is corrected, Arlington County, and all of Virginia, may be filled with judiciary zones which will discriminate against the overwhelming majority of citizens.

A petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Present: All the Justices.

COUNTY BOARD OF
ARLINGTON COUNTY PER CURIAM

-v- Record No. 740803

Richmond, Virginia, September 5, 1975

MARY ROSE GREENE GOD

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

Paul D. Brown, Judge

This is a zoning case in which the County Board of Arlington County denied the application of the landowner, Mary Rose Greene God, for rezoning from single-family residential district (R-6) to apartment house district (RA6-15) of two adjoining lots in the northern portion of the county. Upon the landowner's motion for declaratory judgment, the trial court found that the existing zoning was unreasonable, and therefore invalid, and that the denial of the rezoning was arbitrary and capricious. In its final order, the court placed the land in the zoning classification sought by the landowner.

While the appeal awarded in this case brings under review the trial court's holding that the rezoning denial was arbitrary and capricious, the principal reason we awarded the appeal was to examine the court's action in actually rezoning the land. In light of our recent

decision in the *Randall, Allman,* and *Williams* cases,[1] all handed down after the date of final judgment in the present case, we are constrained to affirm, in summary fashion, the trial court's finding of arbitrariness and capriciousness and to reverse, in similar fashion, the court's action in rezoning the land.

First, with respect to the holding that the rezoning denial was arbitrary and capricious, the evidence fully sustains the trial court's conclusion. The two lots in question, together with two other lots in different ownership, are the remanants of a larger single-family residential district established in 1950 in a block now almost entirely zoned for and devoted to apartment uses, in an area of Arlington County dominated by garden-type apartment houses. The landowner showed that the construction of single-family residences on the lots in question would be economically unfeasible; that the existing zoning was unreasonable; and that her proposed use, the construction of 10 "townhouses of garden apartment style" under an appropriate zoning classification, would be reasonable. Against this, only the opposition of a local civic association and the claim of a serious water problem, which proved to be non-existent, suggested that the present zoning should be retained.

The landowner's evidence was sufficient to overcome the presumed legislative validity of the Board's action

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[1] *City of Richmond v. Randall*, 215 Va. 506, 211 S.E.2d 56 (1975), *Board of Supervisors of Fairfax County v. Allman*, 215 Va. 434, 211 S.E.2d 48 (1975), and *Board of Supervisors of Fairfax County v. Williams*, Va. , S.E.2d (1975).

and to show that the denial was unreasonable. The Board, however, in its turn, failed to produce evidence sufficient to show that the denial was reasonable. The question, then, was not fairly debatable. *See City of Richmond v. Randall, supra*, 215 Va. at 511, 211 S.E.2d at 60. Under the circumstances of this case, the denial of the rezoning application was discriminatory and, therefore, arbitrary and capricious. *See Board of Supervisors of Fairfax County v. Allman, supra*, 215 Va. at 445, 211 S.E.2d at 55.

With respect to the trial court's action in actually rezoning the lots in question, the landowner, in light of *Allman*, concedes that the court "did not have the right ... to simply rezone the land." The landowner also concedes that under the evidence before the trial court there are, in addition to the RA6-15 apartment classification she sought, other multiple-unit zoning categories which would permit her proposed use. The landowner agrees, therefore, that the case must be remanded for further consideration by the Board, at the direction of the trial court, of an appropriate multiple-unit zoning classification for her property.

Accordingly, we affirm the trial court's findings that the existing single-family zoning of the lots in question is invalid and that the Board's denial of rezoning was arbitrary and capricious. We reverse the action of the court in actually rezoning the land. The case will be remanded to the trial court with instructions to enter another order. The new order will suspend the adjudication of invalidity for a prescribed period of time and direct the Board to consider further legislative action. Because the evidence shows that the apartment-

house use proposed by the landowner is reasonable,[2] the new order will enjoin the Board during the prescribed period from taking any action which would disallow such use. The new order will further provide that should the Board fail to take appropriate action within the prescribed period, the adjudication of invalidity will become operative and the injunction will become permanent, provided that the landowner shall not put her property to any uses other than those shown by the record to be reasonable.

Affirmed in part, reversed in part, and remanded.

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[2] In light of the landowner's concession that other multiple-unit zoning categories would permit her proposed use, the Board, following remand, will be free to consider such other categories in addition to the RA6-15 zoning sought by the landowner.

OFFICE OF THE COUNTY ATTORNEY
ARLINGTON, VIRGINIA
REC'D.
MAY 22 1974
A.M.
(stamp)

VIRGINIA:

IN THE
CIRCUIT COURT OF ARLINGTON COUNTY

MARY ROSE GREENE GOD Complainant	)	
v.	)	In Chancery No. 22849
THE COUNTY BOARD OF ARLINGTON, et al, Defendants	)	

MEMORANDUM

I am of the opinion that on the facts as they relate to this particular property, namely lots 26 and 27, they take the issue of the County Board's denial of rezoning out of the fairly debatable category and do make it, in those strong words, "arbitrary and capricious." That is my finding and here is why.

Originally, this piece of ground and the zoning line which ran down the middle of the block between 21st Street and 21st Road were to be viewed differently than today.

When RA-615 was first established, you had not only a straight line, but a mid block line. Now that has

changed, and in the successive zonings, it has marched up filling the block on the 21st Road side. See Photograph C-14 and successive overlays.

The buildings, which were then perhaps 35 or 36 years old, are now, by the testimony some 60 years old. Take the subject property and go around it: On the south side, there is the same apartment zoning sought. It is contiguous, even though the use is for two old houses, on Lots 24 and 25.* And they are old and while the building on Lot 25 is suggested to have a temporary flaky paint problem, there is really a serious problem of age on the house.

When you look diagonally across the street (West) from the subject property, you can see the two RA 8 to 18 apartments, two four-unit buildings never shown as apartments on the Exhibit D-1, the neighborhood conservation plan. They were always shown as residential, indicating a mistake in concept when that plan was endorsed in principle. It was a mistake as to what was existing.

Directly across from Lot 26 is the house pictured in C-8. The angle of the picture is a little different but the property, while a residence, is part of RA 8 to 18 zoning across the street. So you have across from Lot 26, part of the land zoned RA 8 to 18. Thus there is apartment zoning on the south side and to the west apartment zoning opposite a portion, perhaps 30 percent of the two lots. You do have a less intense apartment zoning across the street.

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*See Exhibit D-8A upon which the Court has superimposed the lot numbers shown on Exhibit C-16.

As shown in picture C-9, to the west you have two residences, brick, newer – just an estimate would say they are probably in the 20 to 25 year range. They are good, solid houses, well-built and so on, and are across from a little part of the subject lot 26 and all of 27.

Lot 28 is one of the now definitely older houses; well-painted, neat, trim, but clearly in the category Mr. God testified to, the 60 year age. North of Lot 28 is the rear of other properties. See D7e, D7f and D7g.

You go down 21st Road North. As I walked it on the view and looked down the narrow entrance to Lot 29, the second Inscoe property – and it, too, is well maintained but is an older property, and the slides don't show it too well, but print D7g and slide D7h are absolutely adjacent. Lot 29 has a three-story Fort Bennett unit kind of peering down on it. It might not be Fort Bennett, but it's in the same zoning category and has the general look of the Fort Bennett Apartments.

Now the particular property is (and I'm not ready to say that the zoning line must be only in the middle of the block or only on a street, for that would be too rigid a view) sort of an orphan property in terms of the just general use of land.

It does not appear to have any special suitability as residential, noting the age of the properties around it and the apartment zonings around it. On its south side it faces the back yards of the attendant trash cans and normal things that go with back yards of what is still an apartment zoning, the back yards are right there.

The approach to this property is up an extremely steep hill, not an attractive entrance. Granted, once you're up on top, it is level ground and pretty nice.

There are the backs of the apartments already referred to, shown in C-10, and the quantities of trash they produce out near the street. There are the backs of all the other houses on the west side of Quinn Street, including the two newer brick ones.

At the corner of Quinn and 21st Road the houses back to the subject premises. The two neighbors' Inscoe on Lots 28 and 29 have houses sideways to this one. On 21st Road North there are what were described as cottage-type houses. They must have been the suburban replacement for a barn. See D7e.

Now none of these observations are to deny the niceties and the charm of well-kept older houses. There is a distinction between those of a particular historical mode and those that are cottage types. The latter eventually get replaced – not restored as historical landmarks.

All of these things leave this property, as I say, an orphan for development. It would be much easier to say the evidence is absolutely overwhelming if Lot 29 were RA 6 to 15. But it is all of a 40 foot lot and the same apartments are already breathing down on this immediate property.

Now there is change since the original zoning. There is not only the property rezoning moving up the street. There is the increase in age of the buildings surrounding this property. The development of the two brick houses shown on picture C-9, which are west of this property, put their backsides to this place, so most everything has got its backside to it. All of these things leave the subject property marooned. Add to this not a major, but nevertheless a misunderstanding in the neighborhood conservation plan in not showing the two four-unit apartment buildings in the RA 8 to 18, when

they were right there and diagonally across the street from this property.

Other neighborhood conditions are considered. At the time of the request for zoning there existed the plan for a thoroughfare (subsequently abandoned) only a block away. On two sides it was only a block away from this property. This has been a changing area. There have been acquisitions for Route 66 down on Lee Highway. The uses were obviously the subject of much debate because the Board couldn't decide on them for a long time, and left the uses open.

But when the true light is cast on the facts, then it makes the result of the vote arbitrary. The Board members may not be personally arbitrary, but the result of the rezoning vote is.

It sounds like the Court is being critical of some individuals. It is not. It's the judging of a result. Was the result arbitrary on all the facts?

The sum total of all these things requires a finding for the Complainant.

/s/ Paul D. Brown
Judge

Given: 5/21/74

United States Constitution:

[AMENDMENT XIV]

Section 1.

[Citizenship Rights Not to Be Abridged by States]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of Virginia: Article I.

§11. Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases. – That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any

other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

Relevant sections, Virginia Code Annotated:

§15.1-486. Zoning ordinances generally; jurisdiction of counties and municipalities respectively. – The governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

(a) The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;

(b) The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;

(c) The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used;

(d) The excavation or mining of soil or other natural resources.

(e) [Repealed.]

For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorpo-

rated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality. (Code 1950, § § 15-819, 15-844; Code 1950 (Suppl.), § 15-968; 1962, c.407; 1966, c.344; 1969, Ex. Sess., c.1; 1972, c. 789; 1975, c.641.)

§15.1-488. Regulations to be uniform. – All such regulations shall be uniform for each class or kind of buildings and uses throughout each district, but the regulations in one district may differ from those in other districts. (Code 1950, § § 15-820, 15-845; Code 1950 (Suppl.), § 15-968.2; 1962, c.407.)

§15.1-489. Purpose of zoning ordinances. – Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.1-427. To these ends, such ordinances shall be designed (1) to provide for adequate light, air, convenience of access, and safety from fire, flood and other dangers; (2) to reduce or prevent congestion in the public streets; (3) to facilitate the creation of a convenient, attractive and harmonious community; (4) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (5) to protect against destruction of or encroachment upon historic areas; (6) to protect against one or more of the following overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life,

health, or property from fire, flood, panic or other dangers; and (7) to encourage economic development activities that provide desirable employment and enlarge the tax base. (Code 1950, 15-821; Code 1950 (Suppl.), § 15-968.3; 1962, c.407; 1966, c.344; 1968, c.407; 1975, c.641.)

§15.1-490. Matters to be considered in drawing zoning ordinances and districts. – Zoning ordinances and districts shall be drawn with reasonable consideration for the existing use and character of property, the existing land use plan, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, and the requirements for housing, schools, parks, playgrounds, recreation areas, and other public services; for the conservation of natural resources; and preservation of flood planes [plains] and for the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the county or municipality. (Code 1950, § 15-821; Code 1950 (Suppl.), § 15-968.4; 1962, c.407; 1966, c.344; c.526.)

Zoning Ordinance of Arlington County:

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SECTION 4. "R-20" ONE-FAMILY DWELLING DISTRICTS.

The following regulations shall apply in all "R-20" Districts.

NOTE: For supplemental regulations, see Section 27, "Special Provisions."

A. USES PERMITTED:

1. One-family dwelling.

2. Farming, dairy-farming, livestock and poultry raising, and all uses commonly classed as agricultural, with no restrictions as to the operation of such vehicles or machinery as are incident to such uses, and with no restructions [sic] as to the sale or marketing of products raised on the premises; provided, that any building, structure or yard for the raising, housing or sale of livestock or poultry shall be located no less than one-hundred feet from any street or lot line; provided further, that poultry shall be kept in approved enclosures and shall not be allowed to roam at large.

3. Churches and other places of worship, including parish houses and Sunday Schools, but excluding rescue missions or temporary revivals.

4. Transitional uses: The following uses shall be permitted on a transitional-site in the "R-20" Districts:

a. The principal office of a physician, surgeon or dentist, provided such use is conducted within a dwelling and the residential character of such dwelling is not changed.

b. Public parking area if a use permit is secured, as provided for in Section 32, and said area is located and developed, as required in Section 29, herein.

5. Conditional uses: The following uses may also be permitted, subject to securing a use permit secured as provided for in Section 32, "Use Permits":

a. Schools, private, elementary, junior and senior high, kindergartens and day nurseries.

b. Public libraries, museums, and art galleries.

c. Clubs and grounds for games or sports, including community-swimming pools; provided any such use is not operated primarily for commercial gain, or for which any mechanical-amusement equipment is operated incidental to such games or sports.

d. Publicly-operated recreation buildings, playgrounds, parks, and athletic fields.

e. Community-buildings.

f. Hospitals or sanitariums; except animal hospitals, clinics, and hospitals or sanitariums for contagious, mental, or drug, or liquor addict cases, provided, that any building so used shall be set back not less than one hundred feet from any lot line or street line.

g. Institutional homes and institutions of an educational or philanthropic nature; except those of a correctional nature, or for mental cases.

h. Public utilities and services; such as railroad, trolley, bus, air, or boat passenger stations; railroad offices, right-of-way, and tracks (but excluding car-barns, garages, railroad-yards, sidings and shops); static transformer stations, transmission-lines and towers, commercial and public-utility radio towers, telephone exchanges (but excluding service and storage yards); provided, however, that the exterior appearance of any building permitted under this paragraph shall be in keeping with the character of the neighborhood in which it is located.

i. Private clubs, lodges, fraternities, sororities and dormitories; provided any such use is not operated primarily for commercial gain.

j. Buildings used exclusively by the Federal and State Governments, for public purposes; except penal and correctional institutions.

k. Airports and aircraft-landing fields; cemeteries, and golf courses (except driving-tees and miniature-courses).

l. Parking of a commercial vehicle, in cases working a grave hardship on the resident.

6. Uses, customarily incident to any of the above uses; including home occupation, such as the home office of a physician, surgeon, dentist, minister of religion, or other persons authorized by law to practice medicine or healing; also the home office of resident members of recognized professions (does not include real estate offices) and antique dealers; provided, that: (a) such use is situated in the same dwelling as the home of the occupant; and (b) such use does not occupy more than twenty-five percent of the livable floor area of the building, exclusive of the basement.

7. Accessory buildings, including a private garage, provided that a detached accessory building shall be located as required in Section 29, herein.

8. Name plates and signs as provided for in Section 30.

9. Automobile parking space to be provided as required in Section 29.

B. HEIGHT LIMIT:

No building nor the enlargement of any building shall be hereafter erected to exceed 35 feet.

C. AREA REQUIREMENTS:

1. LOT AREA: Every lot shall have a minimum average width of one hundred feet and a minimum area of twenty thousand square feet. The minimum lot area per dwelling unit shall also be twenty thousand square feet; provided, that where a lot has less width and less area than required in this subsection and was recorded under one ownership at the time of the adoption of this ordinance, such lot may be occupied by any use permitted in this section.

(end of Section 4)

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SECTION 8. "R-6" ONE-FAMILY DWELLING DISTRICTS.

The following regulations shall apply in all "R-6" Districts:

NOTE: For supplemental regulations, see Section 27.

A. USES PERMITTED:

1. All uses permitted in the "R-8" Districts with automobile parking space as required.

2. Transitional uses: The following uses shall be permitted on a transitional site in the "R-6" Districts:

a. Two-family dwellings adjacent to other than "C-1" and "C-1-O" Districts if a use permit is secured as provided in Section 9, "R-5" Districts.

b. With Site Plan approval as specified in Section 32, offices of doctors, physicians, dentists or psychologists, and medical or dental clinics, provided that the basis for judging the merits of any given site plan shall be the degree to which the structure has the appearance of, and complies with the bulk and placement requirements for, a single-family residence.

c. Public parking area if a use permit is secured as provided for in Section 32 and said area is located and developed as required in Section 29.

B. HEIGHT LIMIT:

Same as specified for "R-20" Districts.

C. AREA REQUIREMENTS:

1. LOT AREA: Every lot shall have a minimum average width of sixty feet and a minimum area of six thousand square feet. The minimum lot area per dwelling unit shall also be six thousand square feet; provided, that where a lot has less width and less area than required in this subsection and was recorded under one ownership at the time of the adoption of this ordinance, such lot may be occupied by any use permitted in this section.

(end of Section 8)

SECTION 11. "RA14-26" APARTMENT DWELLING DISTRICTS.

The following regulations shall apply in all "RA14-26" Districts:

NOTE: For supplemental regulations, see Section 27.

A. USES PERMITTED:

1. All uses permitted in "R-5" Districts.

2. Apartment houses, not exceeding six hundred lineal feet measured around the total perimeter of the exterior wall.

3. Uses customarily incident to any of the above uses including home occupation, such as home office of a physician, surgeon, dentist, minister of religion or other person authorized by law to practice medicine or healing; also the home office of resident members of recognized professions (does not include real estate office) provided, that (a) such use is situated in the same dwelling unit as the home of the occupant, and (b) such use does not occupy more than twenty-five per cent of the livable floor area of the said dwelling unit exclusive of the basement.

4. Principal offices of physicians, surgeons or dentists in existing apartment houses or residences converted to such office use or in new buildings designed for such office use; provided, that all such new buildings shall have the exterior appearance of apartment buildings;

and provided further, that all such uses shall be subject to the securing of a use permit therefor as provided in Section 32.

5. Accessory buildings, including a private garage, provided that a detached accessory building shall be located as required in Section 28.

6. Name plates and signs as provided for in Section 30.

7. Automobile parking space to be provided as required in Section 29.

8. Transitional Uses: The following shall be permitted on transitional sites which abuts "C-2", "C-3", "CM" or "M" Districts.

a. With site plan approval, offices of physicians, surgeons, dentists, or psychologists, and medical or dental clinics, provided that principal basis for judging the merits of any given site plan shall be (1) the degree to which the proposed development complies with the bulk, placement and coverage requirements of and has the appearance of an apartment building permitted in the apartment classification in which it is located, (2) the compatibility of the proposed development with existing and anticipated uses in the general neighborhood and (3) compliance with adopted plans for the development of the area.

B. HEIGHT LIMIT:

No building nor the enlargement of any building shall be hereafter erected to exceed either two and one-half stories or twenty-five (25) feet; provided, however, that

no dwelling unit shall be located more than one story above the entrance to said unit; and further provided that in large-scale housing projects having a site area of five (5) acres or more, dwellings may be erected to a height not to exceed either six (6) stories or sixty (60) feet but no less than five (5) stories, provided said dwellings are located not nearer than one hundred fifty (150) feet to any boundary line of the site on which the project is situated.

C. AREA REQUIREMENTS:

1. LOT AREA: Same as for "R2-7" Districts, provided that for apartment houses every lot shall have a minimum average width of seventy-five feet and a minimum area of seventy five hundred square feet. The minimum lot area per dwelling unit for apartment houses, including resident employees' dwelling units, shall be as follows:

Apartment Type	No. of Rooms	Lot Area Required Per Dwelling Unit
1	1	1400 Sq. Ft.
2	2	1800 Sq. Ft.
3	3	2200 Sq. Ft.
4	4 or more	2600 Sq. Ft.

The apartment type is determined by the number of rooms in each dwelling unit, as shown in the table above. Rooms containing bath and/or kitchen facilities are not included in the room count used in the apartment type determination.

Any floor space exceeding forty square feet, enclosed by partitions or walls having a door or other opening

for access shall be deemed to be a room. The use of all rooms shall be clearly defined on the plans submitted with the application for a building permit.

Where a lot has less width and less area than required in this subsection and was recorded under one ownership at the time of the adoption of this ordinance, such lot, if it has an area of 7,000 square feet or more, may be occupied by a two-family dwelling, if a use permit is secured as provided in Section 32, and if such lot has an area of less than 7,000 square feet, it may be occupied by a one-family dwelling.

(end of Section 11)

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SECTION 14. "RA6-15" APARTMENT DWELLING DISTRICTS.

The following regulations shall apply in all "RA6-15" Districts:

NOTE: For supplemental regulations, see Section 27.

A. USES PERMITTED:

1. All uses permitted in the "RA8-18" Districts.
2. Uses customarily incident to any of the above uses including home occupation, such as the home office of a physician, surgeon, dentist, minister of religion, or other person authorized by law to practice

medicine or healing; also the home office of resident members of recognized professions (does not include real estate offices); provided that (a) such use is situated in the same dwelling unit as the home of the occupant, and (b) such use does not occupy more than twenty-five per cent of the livable floor area of the building, exclusive of the basement.

3. Accessory buildings, including a private garage, provided that a detached accessory building shall be located as required in Section 28.

4. Name plates and signs as provided for in Section 30.

5. Automobile parking space to be provided as required in Section 29.

6. With a Use Permit convenience service areas as provided in Section 32*.

B. HEIGHT LIMIT:

No building, nor the enlargement of any building, shall be hereafter erected to exceed either eight (8) stories or seventy-five (75) feet but not less than five (5) stories.

MODIFICATION OF HEIGHT LIMIT IN "RA6-15" DISTRICTS: By site plan approval as specified in the "RA4.8" district, dwellings may be increased to a height not to exceed either twelve (12) stories or one hundred twenty-five (125) feet.

C. AREA REQUIREMENTS:

1. LOT AREA: Same as specified for "R2-7" Districts, provided that for apartment houses every lot

shall have a minimum average width of seventy-five feet and a minimum area of seventy-five hundred square feet. The minimum lot area per dwelling unit for apartment houses, including resident employees' dwelling units, shall be as follows:

*Specifications for convenience service area now found in Section 1, Definitions.

Apartment Type	No. of Rooms	Lot Area Required Per Dwelling Unit
1	1	600 Sq. Ft.
2	2	900 Sq. Ft.
3	3	1200 Sq. Ft.
4	4 or more	1500 Sq. Ft.

The apartment type is determined by the number of rooms in each living unit, as shown in the table above. Rooms containing bath and/or kitchen facilities are not included in the room count used in the apartment type determination.

Any floor space exceeding forty square feet enclosed by partitions, or walls having a door or other opening for access, shall be deemed to be a room. The use of all rooms shall be clearly defined on the plans submitted with the application for a building permit.

(end of Section 14)